Matthews Industries *and* United Steelworkers of America, AFL–CIO. Case 10–CA–25956

September 14, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issue here is whether the judge correctly found that the Respondent discharged four employees in violation of Section 8(a)(3) of the Act.[1] The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions, as further explained below, and to adopt the recommended Order.

In early 1992,[3] the Respondent had a manufacturing work force of approximately 200 employees, including alleged discriminatees Robert Owens, Rodney Flynn, Jeffrey Jones, and Joseph Russell. No union had recently attempted to organize these unrepresented employees. Former Plant General Manager Maurice Dutton testified that he had general conversations with the Respondent's president, Ralph Matthews, about the possibility of unionization. According to Dutton, Matthews normally became emotional and made comments about closing the facility in the event of unionization because he had no intention of having a union.

Press department employee Owens contacted Union Agent Clarence Brown in early February 1992. Brown held preliminary organizational meetings with Owens, Flynn, and another employee on February 13 and 19. Pursuant to Brown's instructions, Owens and Flynn solicited employees to sign authorization cards during breaktimes and before work in the employees' parking lot. The employees generally attempted to keep their union activities secret. However, no-trespassing signs soon appeared in the parking lot.

Quality Inspector William Gillis has worked with the Respondent for many years. Former Plant Manager Dutton testified that Gillis shared ''some confidences'' with him about other employees. About mid-February, Owens observed Gillis ''going down row by row looking in cars'' in the employees' parking lot. Owens testified that he had union literature in his truck which could readily have been seen by Gillis. Also in February, Owens joined a breaktime conversation between Gillis and another employee about the Union. In this conversation, Owens acknowledged starting the organizational campaign. Gillis said he would join the Union if many other employees did, otherwise ''he wouldn't fool with it.''

On February 28, the Union convened another meeting. Fourteen of the Respondent's employees attended, including Owens, Flynn, Russell, and Jones. At the end of the meeting, only those four employees took union bumper stickers and displayed them on their trucks, which they parked in the employees' parking lot. (Employee Mark Ralston testified that this lot is where all employees are ''supposed to park.'')

In the afternoon of March 4, Tim Matthews, assistant to and son of the president, convened a meeting of employees in the press, spot weld, and lab weld departments. He announced that those departments were being consolidated over a 3-month timespan. Matthews stated that there would be a reduction in work force of ''one, five, four, or no employees.'' The criteria for separation from the work force would be performance and attitude. At that time, there were 24 employees in the press department and 4 employees in the 2 other departments.[4]

Matthews also introduced Mike Johnson, who had begun work 2 days earlier as the new press department supervisor. According to the Respondent's notes of the meeting, Johnson encouraged employees to work together to improve operations and to discuss proposals for changes with him. He concluded with the observation that:

> I do not come to work for my health. I come because I get paid and if I can improve that situation, I will. How many of you would come to work if you were not paid? Me either. I will say, if I am on my bike running smoothly and someone pokes a stick in my spokes, I am not going to be a happy person. I have a good attitude about what we're doing and I plan to keep my attitude. Let's work together.

Early the next morning, Thursday, March 5, Gillis initiated a conversation with Flynn. Gillis asked if Flynn had heard anything about a union. When Flynn feigned ignorance, Gillis claimed ''it's all over the plant.'' Flynn then acknowledged his organizing activity and asked if Gillis sincerely wanted to join the Union. Gillis said he would be interested if everybody else was.

Flynn then told Gillis of his plans to set up an employee meeting with the Union for the afternoon of March 6. Gillis said that he could not make the meet-

[1] On March 16, 1993, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief. The Respondent does not except to the judge's finding that it violated Sec. 8(a)(1) by promulgating and distributing an overbroad no-solicitation and distribution rule on March 2, 1992.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] All dates are in 1992, unless otherwise stated.

[4] The four alleged discriminatees worked in the press department.

ing. He asked Flynn to identify those who had already signed union cards. Flynn named only himself, Owens, Jones, and Russell because they were the only employees to have proclaimed their union sympathies by displaying the bumper stickers.

Finally, Flynn asked Gillis if he wanted to sign a union card. Gillis replied that he did not believe he could join the Union because he was a salaried employee. The claim of salaried status was false. Gillis was an hourly paid employee.

In the afternoon, the Respondent's officials informed Flynn, Owens, Jones, and Russell that they were terminated immediately. The employees received pay for the next day (Friday), in addition to severance pay, but were told not to work that day. Their termination notices were marked not for rehire.

Approximately 1 week later, Flynn and Union Agent Brown attempted to handbill employees during the afternoon shift change. Respondent's president Matthews observed them on the sidewalk adjacent to the employees' parking lot and summoned the police. Within a week, Matthews held meetings with employees about the organizing campaign. According to the credited testimony of employee Mark Ralston, Matthews told employees that if a union were selected he would engage in hard bargaining. Matthews also said that employees could obtain forms from their supervisors which would enable employees to get signed cards back from the Union.[5] After one meeting, Quality Control Inspector Gillis told employee Ralston that ''you could get back your cards, and don't sign a union card.''

Personnel Administrator Brenda McMinemon was the only current official of the Respondent to testify about the March 5 termination of the four employees.[6] In addition, the record includes, as exhibits, statements submitted by McMinemon to the Board's Regional Office during the precomplaint investigatory phase of this proceeding. McMinemon said that the departmental consolidation resulted from a general directive by President Matthews to increase productivity and to reduce waste. From March 3–5, she, Tim Matthews, and Supervisor Johnson allegedly reviewed the files of all employees in affected departments, consulted with other supervisory personnel, and jointly decided to terminate Owens, Flynn, Jones, and Russell for varying reasons of performance, disciplinary records, attendance, and attitude. McMinemon acknowledged that some retained employees had worse attendance or disciplinary records than those who were terminated.

[5] The General Counsel does not allege that either Matthews' summoning of the police or his offer of union card revocation forms was unlawful.

[6] The General Counsel called McMinemon to testify under Rule 611(c) of the Federal Rules of Evidence.

The Respondent did not terminate any more press department employees until July 3. On that date, it laid off about 50 employees, including 2 from the press department, because of the loss of a contract for a major product line.

The foregoing narrative of facts is based on uncontroverted and/or credited evidence introduced as part of the General Counsel's case-in-chief. The Respondent chose to rest without presenting any evidence in its defense. In exceptions, it contests the judge's rejection of its motion to dismiss and his finding that the General Counsel's case-in-chief presented prima facie evidence of unlawful antiunion discrimination. In particular, the Respondent argues that the judge erred in finding from circumstantial evidence that it had any knowledge of the four discriminatees' union activities when it discharged them on March 5, 1992. We affirm the judge.

The Board has not hesitated to infer an employer's knowledge of employees' protected activities where the circumstances reasonably warrant such a finding.[7] We find that a reasonable inference to be drawn from the circumstances in this case is that the Respondent was aware of the four discriminatees' support for the Union when they were discharged, and that the discharges were motivated by that support. We rely on the following factors:

(1) The discriminatees were the only employees who overtly supported the Union by displaying bumper stickers on their vehicles. They parked these vehicles in the Respondent's employees' parking lot, where all employees were supposed to park. Owens and Flynn also solicited card signatures in this lot. As demonstrated both by the unprecedented posting of no-trespassing signs in mid-February and by President Matthews' observation of mid-March handbilling, management paid close attention to what went on in the area of the parking lot.

(2) Quality Inspector Gillis' curiosity about union activities was extraordinary. Shortly after card solicitations began at the plant, Owens observed Gillis looking into employees' cars.[8] Gillis expressed an interest in joining the Union, if others did, to both Owens and Flynn, but less than a month later he encouraged Ralston to revoke or not to sign a union authorization card. He also falsely claimed that he was a salaried employee in order to avoid Flynn's solicitation of a commitment to the Union. On the same day that

[7] E.g., *Dr. Frederick Davidowitz, D.D.S.*, 277 NLRB 1046 (1985); *Long Island Airport Limousine*, 191 NLRB 94, 95 (1971), enfd. 468 F.2d 292, 295 (2d Cir. 1972).

[8] Contrary to the Respondent's argument in exceptions, the judge did not rely on this incident to find that Gillis observed bumper stickers which had not yet been displayed. There is no need even to find that he observed the union literature in Owens' truck. The incident does illustrate, however, that Gillis' interest in employee activities went beyond matters of quality control.

Flynn, in conversation with Gillis, specifically named only the four discriminatees as card signatories, the Respondent discharged them. Based on this evidence and former General Manager Dutton's testimony that Gillis shared confidences about employees with him, we find it reasonable to infer that Gillis was one source for identification of union activists to the Respondent's management.[9]

(3) As previously indicated, the discharges occurred less than a week after the discriminatees' display of prounion bumper stickers[10] and only hours after Gillis learned from Flynn about the discriminatees' support for the Union and plans for another union meeting the following day. In view of that timing, we are not persuaded that the departmental consolidation plan was the motivation for the discharges. Even assuming, arguendo, that the Respondent legitimately contemplated consolidation prior to union activity concentrated in the affected press department,[11] there is no credible evidence explaining why the consolidation suddenly took place when it did. There is no indication of a preconceived timetable. Press Department Supervisor Johnson was in only his first week on the job.[12] There was no precipitating economic event. On March 4, Tim Matthews forecast a 3-month implementation period and could not specify how many press department jobs might be eliminated. He gave no indication whatsoever that management was contemplating imminent discharges, even though Personnel Director McMinemon identified Matthews as a principal in the discharge selection process. Less than 24 hours later, the Respondent hastily discharged the discriminatees and paid them not to work the following day. In these circumstances, we do not agree that the consolidation was the reason for the termination of the employees. Further, even assuming arguendo that the efficiencies of consolidation permitted the termination of four employees, the evidence establishes that the Union adherents involved here were discriminatorily selected as the four who would be terminated.

Based on the foregoing, we agree with the judge that the General Counsel presented prima facie proof of the Respondent's knowledge of the discriminatees' union activities. The other elements necessary to establish that the Respondent violated Section 8(a)(3) by discharging employees Flynn, Owens, Jones, and Russell because they engaged in union activities are sufficiently documented in the judge's decision.[13] Therefore, in accordance with our opinion above and the judge's decision, we will adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Matthews Industries, Decatur, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[9] See *NLRB v. Long Island Airport Limousine Service*, 468 F.2d 292, 295 (2d Cir. 1972) (relying on evidence that ''reputed Company informer'' knew of employee's union activities). We disavow any suggestion in the judge's decision that an employee per se enjoys ''some specialized status with management'' because of the quality control function.

[10] The judge actually understated this point by mistakenly stating that the discharges followed ''within two weeks'' of the display of bumper stickers.

[11] The matter is open to considerable doubt. Much of the evidence relating to the consolidation plan is in the Respondent's precomplaint position statement to the Regional Office. Personnel Director McMinemon testified in specific corroboration of only a few aspects of the factual allegations in this statement. Furthermore, we note that the only apparent personnel consequence of the departmental consolidation was the discharges of the four discriminatees. The discharges or layoffs of two additional press department employees on July 3 resulted from the intervening loss of a customer contract.

[12] Absent any alternative explanation, we find that Johnson's remarks to employees on March 4 about attitude and his metaphor about poking a stick in bicycle spokes suggest his awareness of union activity.

[13] With respect to the factor of the Respondent's animus, we reject the Respondent's contention that the judge relied on President Matthews' legitimate predictions of hard bargaining in his mid-March meetings with employees. In any event, we do not rely on this factor. We find animus based on Matthews' solicitation of card revocations in those meetings as well as his earlier statements to Dutton about closing the plant to avoid unionization.

J. Howard Trimble, Esq., for the General Counsel.
Richard I. Lehr, Esq. and *R. David Proctor, Esq.*, of Birmingham, Alabama, for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on August 25 and 26, 1992, in Decatur, Alabama. The hearing was held pursuant to a complaint issued by the Acting Regional Director for Region 10 of the National Labor Relations Board (the Board) on June 2, 1992. The complaint is based on an amended charge filed by the United Steelworkers of America, AFL–CIO–CLC (the Union or the Charging Party) on April 28, 1992. The complaint alleges that Matthews Industries (the Respondent or the Company) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by issuing an employee handbook on or about March 2, 1992, containing an unlawful nonsolicitation and distribution rule. The complaint further alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off and refusing to reinstate its employees Rodney Flynn, Robert Owens, William J. Jones, and Joseph A. Russell on March 5, 1992. The complaint is joined by the answer of the Respondent filed July 13, 1992, where it denies the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified here, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits, and I find that the Respondent was, and has been at all times material, an Alabama corporation, with an office and place of business located at Decatur, Alabama, where it is engaged in contract manufacturing, that during the past calendar year, a representative period, Respondent sold and shipped from its Decatur, Alabama facility finished products valued in excess of $50,000 directly to customers located outside the State of Alabama and that it is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, Respondent contends it is without knowledge, and I find based on the entire record in this proceeding that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Nonsolicitation and Distribution Rule*

On March 2, 1992, the Respondent published a new employee handbook which was handed out to each employee at that time. The handbook contains the following rule restricting solicitation or distribution of literature:

> Solicitation or distribution of literature by anyone, including employees and non-employees, for any cause or purpose is prohibited at all times while on company property.

It was stipulated by the parties at the hearing that the rule has never been enforced with respect to union activities or organizing or union literature. Counsel for the Respondent acknowledged at the hearing that the above rule ''is probably over broad'' and advised that within the past week prior to the hearing the rule has been revised.

Analysis

Based on the above, I find that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by its promulgation and distribution of the above nonsolicitation and distribution rule which is clearly over broad as it places restrictions on solicitation and distribution of literature at all times on the Respondent's property. *Our Way, Inc*., 238 NLRB 209, 214 (1978); *Essex International*, 211 NLRB 749, 750 (1974); *Yerger Trucking*, 307 NLRB 567 (1992); *Baddour, Inc*., 281 NLRB 546, 547 (1986), enfd. mem. 848 F.2d 193 (6th Cir. 1988), cert. denied 109 S.Ct. 370 (1988).

B. *The Discharges*

On March 5, 1992, the Respondent discharged four of its employees Rodney Flynn, Robert Wayne Owens, William Jeffrey Jones, and Joseph A. Russell. The discharges followed by less than a month the commencement of an organizing campaign on behalf of the Union initiated by Owens and meetings with Union Representative Clarence Brown on February 13, attended by Flynn, Owens, and Ronnie Kilpatrick, on February 19, attended by Flynn, Owens, and Ronnie Kilpatrick, and on February 28, attended by Flynn, Owens, Jeffrey Jones, Joseph Russell, and a number of other employees with a total of about 14 employees at the meeting. The discharges also followed the placement of bumper stickers on the personal trucks of employees Flynn, Owens, Jones, and Russell which stickers stated, ''United Steelworkers is the Union for You.'' The discharges were within hours of an interrogation engaged in by longtime employee and quality inspector William Gillis of employee Flynn concerning who was supporting the Union and in which conversation Gillis initially told Flynn he was interested in the Union and would join if the other employees supported the Union and at which time Flynn told Gillis he was one of the supporters of the Union and told him that Owens and Jeff Jones and Andrew Russell were also supporters for the Union. At that time in response to Gillis' inquiry, Flynn told Gillis he was going to arrange another union meeting for the following day for second-shift employees and asked Gillis if he wanted to sign a card whereupon Gillis told Flynn he did not believe he could join because he was a salaried employee but assured Flynn that he would not violate his confidence by divulging what Flynn had told him. I credit the abov-unrebutted testimony of Flynn. In addition Owens, Jones, and Russell each testified that that they took a bumper sticker from Union Business Representative Clarence Brown at the February 28 meeting and put it on their trucks. They were the only employees to do so. The trucks were thereafter regularly parked on the employees' parking lot. Owens testified that shortly before his termination, he observed Gillis on the employees' parking lot ''going down row by row looking in cars.'' On one occasion Owens told Gillis that he was starting up the Union. In addition shortly after the union meetings began, the Respondent posted ''No Trespassing'' signs at entrances to the employees' parking lot.

On March 4, Tim Matthews, assistant to the president and the son of President Ralph Matthews met with employees in the press department, and employees of the spot-weld and lab departments and told them that the departments were being consolidated and that as a result of efficiencies gained there would be a layoff of a few employees based on performance and attitude. On the next day March 5, a Thursday, employees Flynn, Owens, Jones, and Russell were terminated and their termination notices were marked not for rehire. The employees were paid for the next day, a Friday, but told they did not need to work on that date. Personnel Manager Barbara McMinemon who was called to testify by the General Counsel contended that the employees were terminated based on attendance records, performance, prior discipline, and attitude in a joint decision by herself, Assistant to the President Tim Matthews, and new Press Department Supervisor Mike Johnson after she reviewed the personnel records of all production employees. The Respondent put on no evidence but rather moved to dismiss the complaint on the basis that the General Counsel had failed to prove that the Respondent had knowledge of the employees' union activities thus failing to prove a prima facie case of a violation of the Act by their termination by Respondent citing *Pioneer Natural Gas Co.*

v. NLRB, 662 F.2d 408 (5th Cir. 1981); and *Delchamps, Inc. v. NLRB*, 588 F.2d 476 (5th Cir. 1979).

The General Counsel relies on *Greco & Haines, Inc*., 306 NLRB 634 (1992), where the Board stated:

> In addition, circumstantial evidence is sufficient to justify an inference of employer knowledge . . . Thus under established precedent the judge could infer knowledge from the following: the timing of the allegedly discriminatory discharges within days of the union organizing meeting; the abrupt termination of the leading union instigator and another union supporter . . . the inplausible and sometimes conflicting nature of the reasons advanced by the Respondent of its activities and the union animus . . . .

The General Counsel also relies on *Dr. Frederick Davidowitz, D.D.S.*, 277 NLRB 1046 (1985), where the Board affirmed an administrative law judge who

> relied on the timing of the discharges and the pretextual quality of the Respondent's asserted justification for them to establish a basis for the inference of knowledge. We agree with the Judge about the significance of timing and pretextual excuses in this case. We further find that several other factors support a finding that Respondent had knowledge of the activities.

The General Counsel thus contends that the termination of the leading union adherents Owens and Flynn and the other employees stopped ''the infant organizing campaign in its tracks.'' The General Counsel argues ''it is much more likely that Respondent's source of information about the Union and employees involved was Gillis'' relying on testimony of former General Manager Maurice Dutton that he believed Gillis would have reported any union activities to management. The General Counsel also contends that the reasons put forth by Personnel Manager Barbara McMinemon concerning the procedure for considering the employees for termination is not credible in view of the announcement by Matthews on March 4 concerning ''the proposed unification of the press department with spot weld and lab weld departments and that the employees were advised that the changes should be completed in a three month time span.'' Thus, ''the urgency therefore to terminate these four employees the next day is incredulous.''

Analysis

I find that the General Counsel has established a prima facie case that Owens, Flynn, Jones, and Russell were discharged because of their support of the Union. Initially, I credit the unrebutted testimony of these employees that they were the only employees to attach union bumper stickers to their trucks which they parked on the parking lot. I further credit Owens' unrebutted testimony that he observed Gillis checking each car on the parking lot a few weeks prior to the discharges and that he had union literature in his truck which could have readily been observed by Gillis. I further credit the unrebutted testimony of Flynn concerning the inquiry made of him by Gillis concerning the status of the union campaign and that Flynn identified the four discriminatees as union supporters and told Gillis that he was attempting to set up a union meeting with the second shift for the next day. I also credit the unrebutted testimony of Owens that Gillis questioned him about the Union and that he told Gillis he had initiated the union campaign. As the Board has recognized in its prior decisions such as *Greco & Haines, Inc*., supra, direct evidence is often not available to prove knowledge but knowledge may be inferred on the basis of indirect evidence. In the instant case the sudden rush to discharge Owens, Flynn, Jones, and Russell on the same day and 1 day short of the end of the week for which they were paid in total coming within 2 weeks of their commencing to openly display union bumper stickers on their trucks, the inquiry of a longtime employee who because of his quality control function enjoyed some specialized status with management and the initial interest of Gillis in the Union and immediate rejection of it on the alleged ground that he was a salaried employee immediately after he learned the identities of the union organizers from Flynn followed by the discharge of all four employees is sufficient evidence to support an inference and a finding that Respondent obtained knowledge of the union campaign and the identity of the union supporters and establishes knowledge on the part of the Respondent. I thus find the events and the timing involved leading up to the discharges demonstrate that Respondent had knowledge of the union campaign and the identity of the organizers who it moved quickly to discharge and designate as ineligible for rehire. These circumstances demonstrate much more that a mere suspicion of illegal motive. Rather they clearly establish a prima facie case. Moreover although animus of the Respondent can also be established by indirect circumstantial evidence in this case as a result of the timing and circumstances sat out above, the General Counsel produced direct evidence of animus on the part of Respondent through the testimony of former General Manager Maurice Dutton, whom I credit that Respondent's president, Ralph Matthews, had become upset when unionization had been discussed in the past and vowed to close the plant rather then to allow a union to represent the employees.

As the Respondent chose not to proceed after the close of the General Counsel's case, the prima facie case stands unrebutted. I also note the testimony of Barbara McMinemon concerning the selection process and find that it was not the sole criteria used to select the employees for termination but rather that at a minimum the discriminatees were selected for discharge at least in part because of their support of the Union. I further find that the Respondent has failed to rebut the prima facie case established by the General Counsel by the preponderance of the evidence. In *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board held that once the General Counsel makes a prima facie showing that the protected conduct was a motivating factor in the action taken against the employee, the burden then shifts to the employer to demonstrate that it would have taken the action even in the absence of the protected conduct. It is not sufficient for the employer to merely show that it also had a legitimate reason for the action but the employer must also show that the action would have taken place even in the absence of the protected activity. In the instant case as the Respondent did not choose to proceed to attempt to rebut the prima facie case, it has not met this burden. In this regard I have also considered the testimony of Personnel Manager Barbara McMinemen who was called by the Gen-

eral Counsel and of the exhibit submitted concerning the alleged procedures utilized and reasons for the selection of the discriminatees for discharge and found it does not meet this burden. I accordingly find that the Respondent has failed to show by a preponderance of the evidence that these employees would have been discharged in the absence of their engagement in protected activities. I find that Respondent violated Section 8(a)(1) and (3) of the Act by its discharge of Owens, Flynn, Jones, and Russell. *Roure Betrand Dupont, Inc*., 271 NLRB 443 (1984); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

CONCLUSIONS OF LAW

1. Respondent Matthews Industries is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steelworkers of America, AFL–CIO–CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by its promulgation and distribution of an unlawful nonsolicitation and distribution rule.

4. Respondent violated Section 8(a)(1) and (3) of the Act by its discharge of its employees Rodney Flynn, Robert Wayne Owens, William Jeffrey Jones, and Joseph Anthony Russell.

5. The above unfair labor practices have the effect of burdening commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has violated the Act, it shall be ordered to cease and desist therefrom, and to take certain affirmative actions, including the posting of an appropriate notice, designed to effectuate the purposes of the Act, and including the recision of its unlawful nonsolicitation and distribution rule and its unlawful discharges of its employees Rodney Flynn, Robert Wayne Owens, William Jeffrey Jones, and Joseph Anthony Russell. It shall also be ordered to reinstate these employees to their former positions or, if their former positions no longer exist, to substantially equivalent ones and to make them whole for all loss of pay and benefits, including seniority and other rights and privileges sustained by them as a result of Respondent's unlawful discharges of them. Backpay and benefits shall be with interest as computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1] Respondent shall also expunge its records of all references to the unlawful discharges of these employees and inform them in writing that this has been done and that such unlawful actions shall not be used against them in any manner in the future. Respondent shall also preserve all necessary records for computing backpay and benefits and make them available to the Regional Director for Region 10, or his representative.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Matthews Industries, Decatur, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and distributing an unlawful nonsolicitation and distribution rule.

(b) Discharging its employees because of their support of a union or their engagement in union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unlawful nonsolicitation and distribution rule.

(b) Rescind its unlawful discharges of its employees Rodney Flynn, Robert Wayne Owens, William Jeffrey Jones, and Joseph A. Russell and offer them full reinstatement to their former positions or, if their former positions no longer exist, offer to reinstate them to substantially equivalent positions. Make them whole for all loss of pay and benefits and other rights and privileges including seniority sustained by them with interest as prescribed in the remedy section of the decision as a result of Respondent's unlawful discharges of them.

(c) Expunge from its records all references to its unlawful discharges of Flynn, Owens, Jones, and Russell and inform them in writing that this has been done and that such unlawful acts will not be used against them in any manner in the future.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] Under *New Horizons*, interest is computed at the ''short term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6624.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT promulgate and distribute an unlawful nonsolicitation and distribution rule.

WE WILL NOT discharge our employees because of their support of a union or their engagement in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our unlawful nonsolicitation and distribution rule.

WE WILL rescind our unlawful discharges of our employees Rodney Flynn, Robert Wayne Owens, William Jeffrey Jones, and Joseph A. Russell and offer them full reinstatement to their former positions or to substantially equivalent positions if their former positions no longer exist WE WILL make them whole for all loss of earnings and benefits and other rights and privileges sustained by them including seniority, because of our unlawful conduct, with interest, as a result of our unlawful discharges of them.

WE WILL expunge from our records any references to the unlawful discharges of Rodney Flynn, Robert Wayne Owens, William Jeffrey Jones, and Joseph A. Russell and will inform them in writing that this has been done and that the unlawful conduct will not be used against them in any manner in the future.

Our employees have the right to join and support United Steelworkers of America, AFL–CIO–CLC or to refrain from doing so.

MATTHEWS INDUSTRIES